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HIGHER EDUCATION

COMMISSION ON HIGHER EDUCATION

Institutional Codes of Ethics

Proposed Readoption with Amendments: N.J.A.C. 9A:3

Authorized By: Commission on Higher Education, Francis J. Mertz, Chair.

Authority: N.J.S.A. 18A:3B-14(e).

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2006-67.

Submit written comments by May 5, 2006 to:

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The agency proposal follows:

Summary

The Higher Education Restructuring Act of 1994 requires the Commission on Higher Education to adopt a code of ethics applicable to colleges and universities in New Jersey. To fulfill this requirement, the Commission in 1995 promulgated rules to serve as a general model for institutions to use in designing their own ethics codes for their officers and employees and in 2000 readopted the chapter without amendment. The rules outline broad criteria in existing statutory standards for ethical conduct by public officers and employees and require that each public institution's code of ethics address those criteria.

The current rules expire on August 19, 2006, pursuant to N.J.S.A. 52:14B-5.1c. The Commission proposes to readopt the rules with amendments for clarification, consistency with statutory amendments, and expanded compliance referents. A summary of the rule sections and proposed amendments follows.

N.J.A.C. 9A:3-1.1 sets forth the chapter's purpose. To clarify the individuals that institutional codes of ethics cover, the addition of references to statutory definitions is proposed.

N.J.A.C. 9A:3-1.2 currently requires institutional codes to comply with the Conflicts of Interest Law and Local Government Ethics Law, as applicable to the particular institution. Amendments are proposed for the section heading and N.J.A.C. 9A:3-1.2(a) and (c) expanding the compliance requirements to include the rules of the Executive Commission on Ethical Standards (ECES) and any relevant executive orders. N.J.A.C. 9A:3-1.2(c) currently requires the ethics codes of institutions not governed by a particular ethics law to include standards that are "substantially" comparable to those in existing statutes. The imprecise term "substantially" is proposed for deletion.

N.J.A.C. 9A:3-1.3 delineates minimum, general standards for institutional codes of ethics. The current provisions at N.J.A.C. 9A:3-1.3(a)5, about the acceptability of meals from the sponsor of a meeting or event, are proposed for deletion, reflecting the amended Conflicts of Interest Law and amended ECES rules. Proposed for N.J.A.C. 9A:3-1.3(b) is the same additional language proposed for N.J.A.C. 9A:3-1.2, discussed above, requiring conformance of institutional codes of ethics to applicable rules and executive orders, and similar amendments as proposed at paragraphs (a)1 through 10 above.

N.J.A.C. 9A:3-1.4 specifies the need for certain institutions' ethics codes to include procedures for contracts for the development of scientific or technological discoveries; no amendments are proposed.

As the Commission has provided a 60-day comment period on this notice of proposal, this notice is exempted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The Commission's rules proposed for readoption provide guidelines that allow each college and university the latitude to develop a code tailored to its own needs. Such general guidance recognizes that codes of ethics are already governed by applicable statutes, rules, and executive orders and acknowledges the proper locus of responsibility as the institutions themselves. The rules foster institutional autonomy and accountability within the relevant governing frameworks. The proposed amendments should have no effect on the social impact of the existing rules proposed for readoption.

Economic Impact

During the 10 years since their original promulgation, the rules proposed for readoption neither imposed nor removed any reporting or recordkeeping requirements. They did not represent any new cost factor for the institutions, and the proposed amendments likewise do not represent a new cost factor.

Federal Standards Statement

The rules proposed for readoption with amendments are not subject to a Federal standards analysis under Executive Order No. 27 (1994)/N.J.S.A. 52:14B-2.3 because the Commission on Higher Education's regulation of institutional codes of ethics is not subject to any Federal requirements or standards.

Jobs Impact

The rules proposed for readoption with amendments will not result in the generation or loss of any jobs.

Agriculture Industry Impact

The rules proposed for readoption with amendments will have no impact on the agriculture industry.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the rules proposed for readoption with amendments do not impose requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules pertain strictly to public colleges and universities in New Jersey, none of which qualify as a small business because all have at least 100 full-time employees.

Smart Growth Impact

The rules proposed for readoption with amendments will have no impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 9A:3.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

CHAPTER 3

INSTITUTIONAL CODES OF ETHICS

SUBCHAPTER 1. GENERAL STANDARDS

9A:3-1.1 Purpose

Each public institution of higher education shall develop a code of ethics, in accordance with this chapter, governing the conduct of its officers and employees, **as defined in the New Jersey Conflicts of Interest Law at N.J.S.A. 52:13D-13 and the Local Government Ethics Law at N.J.S.A. 40A:9-22.3.** The code of ethics shall establish guidelines and standards of ethical behavior in order to ensure the public's confidence in the conduct of business and operations of the institution.

9A:3-1.2 Compliance with applicable statutes, rules, and executive orders

(a) Each institution's code of ethics shall comply with the requirements of all statutes, **rules and executive orders** applicable to the institution, including, but not limited to, the New Jersey Conflicts of Interest Law, N.J.S.A. 52:13D-12 et seq.[, and]; the Local Government Ethics Law,

N.J.S.A. 40A:9-22.1 et seq.[,]; **rules of the Executive Commission on Ethical Standards; and any applicable executive orders.**

(b) (No change.)

(c) Any institution not governed by a particular ethics statute shall include in its code of ethics standards of conduct [substantially] equal to or exceeding those standards in the New Jersey Conflicts of Interest Law, N.J.S.A. 52:13D-12 et seq. [, and]; the Local Government Ethics Law, N.J.S.A. 40A:9-22.1 et seq.; **rules of the Executive Commission on Ethical Standards; and any applicable executive orders.**

9A:3-1.3 General standards

(a) Each institution's code of ethics, at a minimum, shall include the following general standards. Each code shall:

1.-4. (No change.)

5. Prohibit officers and employees from accepting any gifts, favors, services, or other things of value under circumstances from which it might be reasonably inferred that such gifts, services, or other things of value were given or offered for the purpose of influencing them in the discharge of their official duties[. Nevertheless, officers and employees, during the course of their official duties, may accept meals which are offered as part of a meeting or event so long as all attendees of such meeting or event are also provided such meals. In the event that a sponsor of a meeting has pending with the institution a matter on which the officers or employees must act in the exercise of their duties, during the time that said matter is pending, officers and employees shall not accept any meals from any such sponsor];

6.-10. (No change.)

(b) Each institution, in establishing its code of ethics, shall conform the general standards set forth in this section to any specific requirements established by any applicable statutes, **rules, or executive orders** governing the ethical conduct of employees and officers of that institution.